03-080-1
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BLANK ROME LLP
COUNSELORS AT LAW

Phone: *(202) 772-5837*
Fax: *(202) 572-1437*
Email: *farrell@blankrome.com*

January 5, 2004

Docket No. 03-080-1
Regulatory Analysis and Development
PPD, APHIS
Station 3C71
4700 River Road
Unit 118
Riverdale, MD 20737-1238

Re: Docket No. 03-080-1

To Whom it May Concern:

Enclosed please find the original and three copies of comments submitted on behalf of the Canadian Cattlemen's Association, the Canadian Meat Council, and the entities listed in Appendix A to the comments, in response to the solicitation of comments contained in the Federal Register notice published on Tuesday, November 4, 2003 (68 FR 62386 et seq).

Sincerely,

Edward J. Farrell

EJF:vsf
Enclosures

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COUNSELORS AT LAW

CANADIAN CATTLEMEN'S ASSOCIATION AND CANADIAN MEAT COUNCIL

COMMENTS ON PROPOSED RULE

DOCKET NO. 03-080-1

BOVINE SPONGIFORM ENCEPHALOPATHY

MINIMAL RISK REGIONS AND IMPORTATION OF COMMODITIES

These comments are submitted on behalf of the Canadian Cattlemen's Association (CCA) and the Canadian Meat Council (CMC) [and the organizations that are listed in Appendix A, attached hereto], in response to the invitation for comment contained in the proposed rule referenced above, which was published in the Federal Register of November 4, 2003 (68 FR 62386 et seq). The CCA, established in 1932, is the national association representing the interests of Canada's 90,000 beef producers. It is a federation of eight provincial member organizations, with twenty-seven producers from those eight provinces making up the CCA's board of directors. The Canadian Meat Council is the national trade association representing Canada's federally inspected meat packers and processors. Their beef processing members process in excess of 90 percent of all cattle and beef products produced under federal inspection.

The proposal in question would amend the Animal and Plant Health Inspection Service's (APHIS) regulations regarding the importation of animals and animal products by recognizing a category of regions that present a minimal risk of introducing Bovine Spongiform Encephalopathy (BSE) into the United States, and adding Canada to this category. The proposed regulation would also allow the importation of certain live ruminants and ruminant products from such regions under specified conditions.

The CCA/CMC support the proposed regulation and appreciate APHIS' reliance on scientific principles and risk assessment analysis in drafting its proposal. It is only when such principles are adhered to that agricultural exporting countries like the US and Canada can be assured that their access to international markets is not subject to the political whims of importing countries. The importance of this to the Canadian cattle and beef industries is difficult to overstate given their historical reliance on export markets for over 50 percent of their income. The direct losses to date following the identification of a single BSE positive cow are in excess of C$1 billion.

In particular, the CCA/CMC believe that the APHIS proposal to create a new category of regions presenting a minimal risk for BSE, and the designation of Canada as such a region, is supported by sound science and is a reasonable interpretation of existing guidelines established by the International Office of Epizootics (OIE). However, with respect to risk mitigation, the CCA/CMC believe that the best available scientific evidence supports some modification of the approach taken by APHIS on both live cattle and meat products. Thus, our first comments will address the fundamental issues of the appropriate mitigations to be applied to the trade in live cattle and beef products between Canada and the US. A second set of comments will address specific issues raised by the proposal, and where appropriate, seek clarification of apparent inconsistencies and suggest additions and/or alternatives which might more accurately reflect the application of APHIS' underlying risk assessment to the trade in live cattle and beef products from Canada to the US.

Turning now to the broader issues of concern, the first is the proposed adoption of the age criterion of under 30 months of age as the principal risk mitigation factor and consequent limiter on the trade in both animals and meat products generally. This choice has dictated the exclusion from the proposed regulation of consideration of the possible approval for importation of breeder animals (both beef and dairy), and older animals, such as cull cows and bulls, for slaughter. It has also resulted in significantly limiting the importation of meat products to those derived from animals under 30 months of age.

Based on the current state of scientific knowledge on BSE, and, indeed, USDA's own risk analysis, age should not be the primary mitigation factor in determining the qualification of animals and products for safe importation into the United States. To put this in context, the USDA notes in the risk analysis prepared in conjunction with this rulemaking that "(t)he overall risk concern is whether the imported commodities are likely to contain infectious levels of the agent, enter the US animal feed supply, and be able to infect animals." The risk analysis also acknowledges that the primary source of BSE infection is commercial feed contaminated with infectious agent. As contaminated feed is the most likely pathway of BSE transmission, the clear inference is that if any distinction is to be drawn between categories of live cattle and meat products for importation it should be based on the risk of exposure to contaminated feed, and thus would reasonably fall between animals which were born before and after the feed ban in Canada became effective. The fact that BSE rarely presents in animals under 30 months of age is distinctly a secondary risk factor to the acquisition of the infectious agent in the first place.

We would suggest, therefore, that the proposed regulation be modified to allow for the importation of animals for slaughter and feeding that were born after the feed ban in Canada was put in place, and secondly that the regulation be expanded to allow the importation of breeding animals who likewise were born after the feed ban was established. As the United States has recently announced the adoption of an SRM removal policy, any potential concern that SRMs could enter the US food chain through the importation of such animals is now moot. Further, by analogy the categories of meat products allowed for importation should be similarly expanded. Reasonable identification and certification requirements could be established to assure compliance with both the age and feeding regimens of the animals or products imported. In this context we would note that in the pure bred sector all registered cattle can now be traced back to both the herd of origin and the dam, by way of tattoo or other means of identification, with records that include the date of birth. In addition, since 2002 all breeding cattle and milking cattle can be traced back to the herd of origin under Canada's mandatory identification program, which was implemented in 2001.

Second, as applied to meat, the proposed regulation is structured as a general prohibition with exceptions. We believe that it should instead be structured as an allowance of the importation of all meat and meat products, except those products which either are, or include or are produced from, specified risk materials. Such an approach would be consistent with the statement in the preamble to the proposed rule that "the risks associated with tissue localization can be mitigated by accepting only tissues that are unlikely to have infectious levels of the agent due to the nature of the tissue or the age of the animal (in cattle under 30 months of age only the distal ileum is such a risk material), or commodities derived from those tissues".

Moreover, the logic behind such an approach is compelling. Specifically, the proposed regulation would allow the slaughter in the US of imported Canadian cattle under thirty months of age with the only tissue mitigation being the removal of the distal ileum by removing the intestine. All other slaughter products would be allowed to move freely into US commerce. To restrict the importation of such products if that same animal had been slaughtered in Canada would be unjustified.

Turning now to our specific comments. First, proposed Section 93.436(a), would provide as a condition for the importation of bovines for immediate slaughter that such animals ".....are not known to have been fed ruminant protein other than milk protein, during their lifetime.....". With respect to this limitation, similar language is repeated in the proposals dealing with the importation of cattle for feeding, fresh (chilled or frozen) whole or half carcasses, fresh (chilled or frozen) meat, and tallow. As a matter of internal consistency, this requirement does not accurately reflect the statement in the preamble to the proposed regulation that Canada's existing feed ban "exceeds what we consider the minimal necessary measure of banning the feeding of ruminant material to ruminants. Under the ban in Canada, mammalian protein may not be fed to ruminants, with certain exceptions. These exceptions include pure porcine or equine protein, blood, milk and gelatin. The feed ban is essentially the same as the feed ban in place in the United States." The confusion here is two-fold. First the inconsistency between the proposed regulatory language and the preamble statement, and secondly the fact that

the preamble statement itself does not accurately reflect the requirements of the feed bans which are currently in place in both the United States and Canada. Specifically, those feed bans allow the feeding of bovine blood and milk protein to bovines, in addition to porcine and equine protein, blood, milk and gelatin. The regulatory provisions should be made consistent with the feed bans in place in both the US and Canada.

Second, under proposed Section 93.436(a)(7), it would be required that the intestines of slaughter animals be removed "in a manner approved by the Administrator." The removal of the intestine in its entirety is not necessary in order to remove the specified risk material (SRM) of concern, which is the distal ileum. The current SRM regulations in force in Canada, which were adopted in consultation with the United States, call for the removal of the distal ileum in slaughter animals under 30 months of age. The removal of the entire intestine, in addition to the distal ileum, is an unnecessary procedure, which has no risk mitigation benefit. In this context we note that the proposed regulations consider as adequate the removal of the tonsils, an SRM, from the tongue, an adjoining tissue, as sufficient risk mitigation.

Third, with respect to liver, there is an internal inconsistency in the proposed regulations, while with respect to other offal, in particular heart and kidney, the proposed regulation would appear to exclude products which are currently being allowed into the US from Canada by permit. In regard to liver, Section 94.19(c) would specifically allow the entry of bovine liver subject only to the condition that it be derived from animals for which an air injected stunning process was not used at slaughter. To the contrary, proposed Section 95.4 would establish restrictions on the importation of offal, which is defined by Section 95.1 to include liver, that would effectively preclude the entry of liver. Likewise, Section 95.4 of the proposed regulations would also limit the importation of other offal, which is defined again by proposed Section 95.1 to include, in addition to liver, brains, thymus, pancreas, heart and kidney.[1] Under current permitting procedures, both heart and kidney are allowed entry, subject to verification that the

[1] While unlike liver there is no specific provision in the proposed regulation which would allow for the importation of heart, we note that heart is included within the FSIS definition of meat discussed below, and thus would appear to be allowed entry under that provision while denied entry under this one.

animals from which the hearts or kidneys were obtained were less than 30 months of age, were subject to a feed ban during their lifespan, and were slaughtered in dedicated or segregated facilities. As far as we have been able to determine, there has never been detectable infectivity of BSE found in either kidney or heart. Thus the final regulation should include, in addition to liver, both heart and kidney as being permitted importation without restriction. Moreover other offal and variety meats which are considered to pose no identifiable risk, as listed in Appendix B, should be eligible for importation. To be clear, this proposal is distinctly a second best option to the establishment of a system, as suggested above, which would allow for the importation of all beef products except those which either are, or contain or are derived from, SRMs. In fact, the length of the Appendix B list alone makes a strong case for the adoption of CCA/CMC's preferred option.

Fourth, Section 95.4(f) would allow importation of tallow containing less than 0.15 percent protein and derived from animals that were less than 30 months of age when slaughtered, born after the adoption of an effective feed ban, and not known to have been fed ruminant protein, other than milk protein, during their lifetime. Also the tallow must not have been derived from an animal that died otherwise than by slaughter, and from which the intestines were removed at slaughter. In addition to the fact, noted above, that the language "not known to have been fed ruminant protein other than milk protein" does not accurately reflect the current feed bans in place in the US and Canada, the proposed regulation takes a different approach than that taken in the current permitting process. Specifically, under the permit standard there is no limitation on the protein content of imported tallow nor on the age/feed ban status of the animal from which it was derived. There is, however, a limitation on the use of the imported tallow to non-feed uses. Consistent with OIE recommendations the proposed regulation should be revised to allow for the unrestricted importation of tallow containing less than 0.15 percent protein, and for the importation of tallow not meeting that protein requirement provided that it has not been prepared using SRMs.

Fifth, Section 93.436(b), which would establish conditions for the importation of feeder

cattle, provides that "(3) (t)he inside of one ear on each animal must be permanently and legibly tattooed with letters identifying the exporting country. Animals exported from Canada must be tattooed with the letters 'CAN' ". To provide flexibility we suggest that this section be amended to allow for the use of other means of identification that may be functionally superior, as deemed acceptable to the Administrator of APHIS.

Finally, the incorporation by reference in the proposed regulations of the USDA's Food Safety and Inspection Service's (FSIS) definition of meat (Section 94.19(a)(3)), effectively means that any product not included within that definition is excluded from entry. Specifically, in pertinent part the FSIS definition (9 CFR 301.2) provides that meat is "(t)he part of the muscle of any cattle . . . .which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. . .". The referenced definition does not include meat food products, which are separately defined by FSIS in the same CFR part as "(a)ny article capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle . . .", and would consequently exclude from importation a whole range of products for which there is absolutely no discernible risk factor.

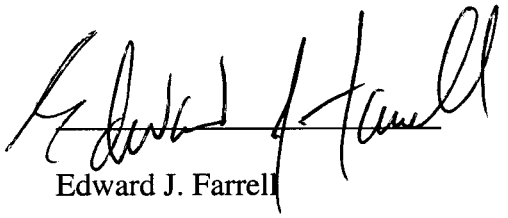
These examples highlight the need, discussed above, to alter the basic regulatory approach with respect to meat products to one which allows for the importation of all products except those which are either SRMs or are made from or incorporate SRMs. At the very least the definition of meat needs to be expanded so as to allow for the importation of products which present no BSE risk. Moreover, as new products and/or processes are developed there should be a mechanism adopted by regulation to allow for their review and approval for importation. Likewise, the regulations should be flexible enough to allow for the adoption of changes justified by the evolution of the scientific understanding of BSE and its transmission. In particular, if OIE recommendations change, the US should be a position to readily evaluate and, if appropriate,

adopt those changes.

In conclusion, it is important to note that the risk based approach adopted by APHIS in this proposed rulemaking will serve to benefit all meat exporting countries by requiring adherence to sound scientific principles before trade is interrupted, or, if interrupted, allow resumption in an orderly and expedited manner. Without this responsible approach other exporting countries could find themselves unnecessarily suffering enormous economic losses like the Canadians have suffered since May 20, 2003.

January 5, 2004

Respectfully submitted,



Edward J. Farrell

APPENDIX A

The following Associations have indicated their support for the Canadian Cattlemen's Association and Canadian Meat Council Comments on Proposed Rule Docket No. 03-080-1:

British Columbia Cattlemen's Association
Alberta Beef Producers
Saskatchewan Stock Growers' Association
  Saskatchewan Cattle Feeders Association
  Agricultural Producers of Saskatchewan
Ontario Cattlemen's Association
  Ontario Cattle Feeders
Prince Edward Island Cattlemen's Association
Nova Scotia Cattlemen's Association
Manitoba Cattle Producers' Association
La Federation des Producteurs de Bovins du Quebec
Canadian Cattle Identification Agency
Canadian Beef Breeds Council
Canadian Federation of Agriculture
Beef Information Centre

APPENDIX B

LIST OF BY-PRODUCTS FOR US

- Blood Products
- Fetal Plasma
- Fetal Blood
- Blood By-Products
- Whole Blood
- Hides

- Gel Bone
- Femur Bones
- Marrow Bones
- Ox Tail
- All Bones[1]

- Fetal Calf Skin

- Mountain Chain Tripe
- Tripe
- Heart
- Liver
- Kidney
- Tongue (all specs)
- Sweetbread/Thymus Gland
- Honeycomb Tripe
- Weasand Meat
- Backstrap

- Omassum
- Small Raw Intestine (distal ileum out)[2]
- Large Intestine
- Abomassum
- Cooked Small Intestine (distal ileum out)[2]
- Tunic Tissue
- Rumen
- Cecum
- Rennet

- Pancreas
- Salivary Gland

- Aorta
- Ovaries
- Trachea
- Nasal Septum
- Bile
- Spleens
- Concentrated Bile
- Pizzle
- Ox Lips
- Lips
- Bung Caps
- Tendons/Ligaments
- Gall Stones
- Toe Nails
- Ears
- Snouts

- Scalded Beef Feet
- Scalded, Singed Beef Feet
- Scalded, Singed Beef Skin
- Blood Plasma
- Scalded Long-cut Feet
- Scalded Short-cut Feet
- Scalded, Singed Head Skins

- Head Meat
- Cheek Meat
- Head and Cheek Meat
- Lungs

- Tallow
- Inedible Tallow
- Blood Meal
- Surfactant

- Meat Bone Meal[3]

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[1] Except vertebral column from animals over 30 months of age

[2] Procedures are currently under review by CFIA to allow for certification of removal of the distal ileum

[3] Subject to revision of OIE recommendations